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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA,

Plaintiff,

v.

AGUSTIN JAIME BARRAGAN-
VAZQUEZ

Defendant.

Case No.: 08-CR-2341-JTM

Date: August 8, 2008
Time: 11:00 a.m.

NOTICE OF MOTIONS AND
MOTIONS TO:

1) COMPEL DISCOVERY;
2) GRANT LEAVE TO FILE
FURTHER MOTIONS

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
LEAD ATTORNEY, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on Monday, August 8, 2008, before the
Honorable Jeffrey T. Miller, at 11:00 a.m., or as soon thereafter as counsel may be
heard, the defendant, AGUSTIN JAIME BARRAGAN-VAZQUEZ, by and through
counsel, Frank A. Balistrieri, will ask this Court to issue an order granting the
motions listed below.

MOTIONS

The defendant, AGUSTIN JAIME BARRAGAN-VAZQUEZ by and through counsel, Frank A. Balistrieri, asks this Court pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes and local rules for an order to:

- 1) Compel Discovery;
- 2) Grant Leave to File Further Motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

Dated: July 22, 2008

/s/Frank A. Balistrieri
Frank A. Balistrieri,
Attorney for Defendant,
AGUSTIN JAIME BARRAGAN-VAZQUEZ

CERTIFICATE OF SERVICE

I, Frank A. Balistreri, hereby certify to the best of my information and belief that by having e-filed the "NOTICE OF MOTIONS AND MOTIONS TO 1) COMPEL DISCOVERY, 2) GRANT LEAVE TO FILE FURTHER MOTIONS" and "MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS." I have caused a copy of each to have been served via electronic mail upon each of the following:

efile.dkt.gc2@usdoj.gov

Dated: July 22, 2008

/s/Frank A. Balistreri

Frank A. Balistreri,

Attorney for Defendant,

AGUSTIN JAIME BARRAGAN-VAZQUEZ

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8 Attorney for Defendant, AGUSTIN JAIME BARRAGAN-VAZQUEZ

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11 (HONORABLE JEFFREY T. MILLER)

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 AGUSTIN JAIME BARRAGAN-
16 VAZQUEZ

17 Defendant.
18

Case No.: 08-CR-2341-JTM

Date: August 8, 2008

Time: 11:00 a.m.

19 MEMORANDUM OF POINTS
20 AND AUTHORITIES
21 IN SUPPORT
22 OF DEFENDANT'S MOTIONS

23 Defendant, AGUSTIN JAIME BARRAGAN-VAZQUEZ, by and through counsel,
24 Frank A. Balistreri, hereby submits the following memorandum of points and authorities
25 in support of her motions.
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1 MOTION TO COMPEL DISCOVERY AND PRESERVE EVIDENCE

2 Defense counsel has not yet received any discovery in this case. Mr. Barragan-
3 Vazquez moves for the production by the government of the following discovery and for
4 the preservation of evidence. This request is not limited to those items that the
5 prosecutor knows of, but rather includes all discovery listed below that is in the
6 custody, control, care, or knowledge of any government agency. See generally Kyles
7 v. Whitley, 514 U.S. 419 (1995); United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

8 (1) The Defendant's Statements. The Government must disclose to the
9 defendant all copies of any written or recorded statements made by the defendant; the
10 substance of any statements made by the defendant which the Government intends to
11 offer in evidence at trial; any response by the defendant to interrogation; the substance
12 of any oral statements which the Government intends to introduce at trial and any
13 written summaries of the defendant's oral statements contained in the handwritten
14 notes of the Government agent; any response to any Miranda warnings which may
15 have been given to the defendant; as well as any other statements by the defendant.
16 Fed. R. Crim. P. 16(a)(1)(A) and (B). The Advisory Committee Notes and the 1991
17 amendments to Rule 16 make clear that the Government must reveal all the
18 defendant's statements, whether oral or written, regardless of whether the government
19 intends to make any use of those statements.

20 (2) Arrest Reports, Notes and Dispatch Tapes. The defense also specifically
21 requests that all arrest reports, notes and dispatch or any other tapes that relate to the
22 circumstances surrounding his arrest or any questioning, if such reports have not
23 already been produced in their entirety, be turned over. This request includes, but is
24 not limited to, any rough notes, records, reports, transcripts or other documents in
25 which statements of the defendant or any other discoverable material is contained.
26 Such material is discoverable under Fed. R. Crim. P. 16(a)(1)(A) and (B) and Brady v.
27 Maryland, 373 U.S. 83 (1963). See also Loux v. United States, 389 F.2d 911 (9th Cir.

1 1968). Arrest reports, investigator's notes, memos from arresting officers, dispatch
2 tapes, sworn statements, and prosecution reports pertaining to the defendant are
3 available under Fed. R. Crim. P. 16(a)(1)(B), Fed. R. Crim. P. 26.2, and Fed. R. Crim.
4 P. 12(h). Preservation of rough notes is requested, whether or not the government
5 deems them discoverable.

6 (3) Brady Material. Defendant requests all documents, statements, agents'
7 reports, and tangible evidence favorable to the defendant on the issue of guilt and/or
8 which affects the credibility of the government's case. Under Brady, impeachment as
9 well as exculpatory evidence falls within the definition of evidence favorable to the
10 accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427
11 U.S. 97 (1976).

12 (4) Any Information That May Result in a Lower Sentence Under The
13 Guidelines. As discussed above, this information is discoverable under Brady v.
14 Maryland, 373 U.S. 83 (1963). This request includes any cooperation or attempted
15 cooperation by the defendant, as well as any information that could affect any base
16 offense level or specific offense characteristic under Chapter Two of the Guidelines.
17 Also included in this request is any information relevant to a Chapter Three adjustment,
18 to a determination of the defendant's criminal history, or to any other application of the
19 Guidelines.

20 (5) Any Information That May Result in a Lower Sentence Under 18 U.S.C. §
21 3553. After United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005), the
22 Guidelines are merely advisory and federal sentencing is governed by 18 U.S.C. §
23 3553, which requires a judge to consider "any information about the nature of the
24 circumstances of the offense." 18 U.S.C. § 3553(a)(1). This broad range of judicial
25 discretion, combined with the mandate that "[n]o limitation shall be placed on the
26 information concerning the background, character, and conduct of a person convicted
27 of an offense which a court of the United States may receive and consider for the
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1 purpose of imposing an appropriate sentence," 18 U.S.C. § 3661, means that any
2 information whatsoever may be "material ... to punishment," Brady, 373 U.S. at 87,
3 whether or not the government deems it discoverable.

4 (6) The Defendant's Prior Record. Evidence of prior record is available under
5 Fed. R. Crim. P. 16(a)(1)(D). Counsel specifically requests that the copy be complete
6 and legible.

7 (7) Any Proposed 404(b) Evidence. Evidence of prior similar acts is
8 discoverable under Fed. R. Crim. P. 16(a)(1)(E) and Fed. R. Evid. 404(b) and 609. In
9 addition, under Fed. R. Evid. 404(b), "upon request of the accused, the prosecution . . .
10 shall provide reasonable notice in advance of trial . . . of the general nature" of
11 any evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial.
12 The defendant requests that such notice be given three weeks before trial in order to
13 give the defense time to adequately investigate and prepare for trial.

14 (8) Evidence Seized. Evidence seized as a result of any search, either
15 warrantless or with a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(E).

16 (9) Request for Preservation of Evidence. The defense specifically requests
17 that all dispatch tapes or any other physical evidence that may be destroyed, lost, or
18 otherwise put out of the possession, custody, or care of the government and which
19 relate to the arrest or the events leading to the arrest in this case be preserved. This
20 request includes, but is not limited to, the results of any fingerprint analysis, alleged
21 narcotics, the defendant's personal effects, the vehicle, and any other evidence seized
22 from the defendant, or any third party. It is requested that the government be ordered
23 to question all the agencies and individuals involved in the prosecution and
24 investigation of this case to determine if such evidence exists, and if it does exist, to
25 inform those parties to preserve any such evidence.

26 (10) Tangible Objects. The defense requests, under Fed. R. Crim. P.
27 16(a)(1)(E) the opportunity to inspect and copy as well as test, if necessary, all other
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documents and tangible objects, including photographs, books, papers, documents, photographs of buildings or places or copies of portions thereof which are material to the defense or intended for use in the government's case-in-chief or were obtained from or belong to the defendant.

(11) Evidence of Bias or Motive to Lie. The defense requests any evidence that any prospective government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988).

(12) Impeachment evidence. Defendant requests any evidence that any prospective government witness has engaged in any criminal act whether or not resulting in a conviction and whether any witness has made a statement favorable to the defendant. See Fed. R. Evid. 608, 609 and 613. Such evidence is discoverable under Brady v. Maryland. See United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988) (witness' prior record); Thomas v. United States, 343 F.2d 49 (9th Cir. 1965) (evidence that detracts from a witness' credibility).

(13) Evidence of Criminal Investigation of Any Government Witness. The defense requests any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir. 1985).

(14) Evidence Affecting Perception, Recollection, Ability to Communicate. Defendant requests any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective witness's ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic. United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir. 1980).

(15) Witness Addresses. The defense requests the name and last known

1 address of each prospective government witness. See United States v. Napue, 834
2 F.2d 1311 (7th Cir. 1987); United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure
3 to interview government witnesses by counsel is ineffective); United States v. Cook,
4 608 F.2d 1175, 1181 (9th Cir. 1979), overruled on other grounds by Luce v. United
5 States, 469 U.S. 38 (1984) (defense has equal right to talk to witnesses). The
6 defendant also requests the name and last known address of every witness to the
7 crime or crimes charged (or any of the overt acts committed in furtherance thereof) who
8 will not be called as a government witness. United States v. Cadet, 727 F.2d 1453 (9th
9 Cir. 1984).

10 (16) Name of Witnesses Favorable to the Defendant. The defense requests the
11 name of any witness who made any arguably favorable statement concerning the
12 defendant or who could not identify him or who was unsure of his identity, or
13 participation in the crime charged. Jackson v. Wainwright, 390 F.2d 288 (5th Cir.
14 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th Cir. 1980); Jones v. Jago, 575
15 F.2d 1164, 1168 (6th Cir. 1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979).

16 (17) Statements Relevant to the Defense. The defense requests disclosure of
17 any statement that may be "relevant to any possible defense or contention" that he
18 might assert. United States v. Bailleaux, 685 F.2d 1105 (9th Cir. 1982). This would
19 include Grand Jury transcripts which are relevant to the defense motion to dismiss the
20 indictment.

21 (18) Jencks Act Material. The defense requests all material to which defendant
22 is entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, reasonably in advance of trial,
23 including dispatch tapes. A verbal acknowledgment that "rough" notes constitute an
24 accurate account of the witness' interview is sufficient for the report or notes to qualify
25 as a statement under § 3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-92
26 (1963).

27 (19) Giglio Information. Pursuant to Giglio v. United States, 405 U.S. 150
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1 (1972), the defendant requests all statements and/or promises, expressed or implied,
2 made to any government witnesses, in exchange for their testimony in this case, and all
3 other information which could arguably be used for the impeachment of any
4 government witnesses.

5 (20) Reports of Scientific Tests or Examinations. Pursuant to Fed. R. Crim. P.
6 16(a)(1)(F), the defendant requests disclosure and the opportunity to inspect, copy,
7 and photograph the results and reports of all tests, examinations, and experiments
8 conducted upon the evidence in this case, including, but not limited to, any fingerprint
9 testing done upon any evidence seized in this case, that is within the possession,
10 custody, or control of the government, the existence of which is known, or by the
11 exercise of due diligence may become known, to the attorney for the government, and
12 that are material to the preparation of the defense or are intended for use by the
13 government as evidence in chief at the trial.

14 (21) Henthorn Material. The defendant requests that the prosecutor review the
15 personnel files of the officers involved in his arrest, and those who will testify, and
16 produce to him any exculpatory information at least two weeks prior to trial and one
17 week prior to the motion hearing. This includes all citizen complaints and other related
18 internal affairs documents involving any of the immigration officers or other law
19 enforcement officers who were involved in the investigation, arrest and interrogation of
20 defendant. See United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991). In addition, he
21 requests that if the government is uncertain whether certain information is to be turned
22 over pursuant to this request, that it produce such information to the Court in advance
23 of the trial and the motion hearing for an in camera inspection.

24 (22) Informants and Cooperating Witnesses. The defense requests disclosure
25 of the names and addresses of any informants or cooperating witnesses used or to be
26 used in this case. The government must disclose the informant's identity and location,
27 as well as disclose the existence of any other percipient witness unknown or
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1 unknowable to the defense. Roviaro v. United States, 353 U.S. 53, 61-62 (1957). The
2 defense also requests disclosure of any information indicating bias on the part of any
3 informant or cooperating witness. Giglio v. United States, 405 U.S. 150 (1972). Such
4 information would include what, if any, inducements, favors, payments, or threats were
5 made to the witness to secure cooperation with the authorities.

6 (23) Expert Witnesses. Pursuant to Fed. R. Crim. P. 16(a)(1)(G), the defendant
7 requests a written summary of the expert testimony that the government intends to use
8 at trial, including a description of the witnesses' opinions, the bases and the reasons
9 for those opinions, and the witnesses' qualifications.

10 (24) Residual Request. The defense intends by this discovery motion to invoke
11 his rights to discovery to the fullest extent possible under the Federal Rules of Criminal
12 Procedure and the Constitution and laws of the United States. This request specifically
13 includes all subsections of Rule 16. Defendant requests that the government provide
14 him and his attorney with the above requested material sufficiently in advance of trial.

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LEAVE TO FILE FURTHER MOTIONS

AGUSTIN JAIME BARRAGAN-VAZQUEZ also seeks leave to file further motions, as discovery and investigation are continuing.

Respectfully submitted,

/s/Frank A. Balistrieri

Dated: July 22, 2008

Frank A. Balistrieri,

Attorney for Defendant,
AGUSTIN JAIME BARRAGAN-VAZQUEZ